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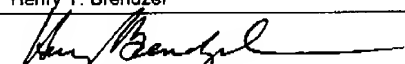
<b>Date:</b> December 09, 2004	
<b>To:</b> Examiner: V. Paul Harper	<b>From:</b> Henry T. Brendzel, Esq
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<b>Re:</b> Serial No: 09/700,522	<b>Pages:</b> Cover + 4

Henry Brendzel

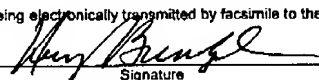
<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)		Complete if Known	
		Application Number	09/700,522
		Filing Date	11/15/2000
		First Named Inventor	David A. Kaplow
		Examiner Name	V. Paul Harper
		Group/Art Unit	2654
Total number of pages in this Submission: this page, plus		3	Attorney Docket ID
			Kaplow 1999-0096A

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ENCLOSURES (check all that apply)		
If Fee Form is not included, but a fee is due, the Commissioner is Authorized to charge Deposit Account No 600732 of Henry T. Brendzel, and consider that appropriate requests have been made.	<input type="checkbox"/> Declaration (no Missing Parts Notice)  <input type="checkbox"/> Assignment Papers (for an Application)  <input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition Routing Slip (TO/SB/69) and Accompanying Petition  <input type="checkbox"/> To Convert a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation or Change of Correspondence Address  <input type="checkbox"/> Express Abandonment  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> To Convert to Statutory Invention Registration	<input type="checkbox"/> Postcard(s)  <input type="checkbox"/> Small Entity Statement  <input type="checkbox"/> Request for a Refund  <input type="checkbox"/> After Allowance Communication to group  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input type="checkbox"/> Appeal Communications to Group (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input type="checkbox"/> Other
<input type="checkbox"/> Fee Form ( <input type="checkbox"/> Check included)  <input checked="" type="checkbox"/> Amendment/Response <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavit(s)/Declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.2 or 1.53		

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Firm or Individual Name	Henry T. Brendzel	
Signature		Date 12/9/04

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Kapilow 1999-0096A

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## Patent Application

Inventor(s)	David A. Kapilow	Case Name	Kapilow 1999-0096A
Filing Date	11/15/2000	Serial No.	09/700,522
Examiner	V. Paul Harper	Group Art Unit	2654
Title	Method and Apparatus for Performing Packet Loss or Framer Erasure Concealment		

COMMISSIONER FOR PATENTS

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SIR:

## AMENDMENT REMARKS

This is in response to an Office action dated September 20, 2004.

Claims 1 and 2 were provisionally rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claim 1 of copending application No. 09/700,524 in view of Chen, US Patent 5,615,298. Applicant respectfully traverses.

First, a provisional rejection may be applied based on an earlier filed, copending, unpublished application. MPEP 706.02(f)(2). Since the '524 copending application was filed on the same day as the instant application, it is not an earlier filed application and, therefore, it is not subject to a provisional rejection in view of the '524 application.

Additionally, it is respectfully submitted that the rejection is at least premature. Even without addressing the merits of the Examiner's assertion as to obviousness:

- (a) it is not known whether the '524 application will issue,
- (b) Even if the '524 application issues, it is not known whether the Examiner will even wish to assert obviousness, or is asserted, whether the Examiner is correct in such an assertion, and
- (c) it is not known which application will issue first.